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SUBJECT: EXTRADITION: THAILAND: SUWIT A.K.A. CHENG PRASOPRAT

REF: SECSTATE 43624

¶1. (U) This cable is intended to address the questions posed to Post in Reftel regarding the proposed extradition of Suwit a.k.a Cheng Prasoprat from the US to Thailand.

¶2. (U) The Embassy believes that there is no merit to Mr. Suwit's assertion in his submission to the Department that he would be tortured if extradited to Thailand. While some NGOs and legal organizations report that some members of the police occasionally torture suspects to obtain confessions, we have no reason to believe that Suwit would be subjected to torture. As an American citizen, Post's American Citizens Services section would closely monitor Suwit's well-being through regular prison visits. Those visits, combined with the relative high-profile nature of this extradition case, lead Post to conclude that Suwit would not be mistreated during his incarceration in Thailand. As such, and in accordance with standard procedures in extradition cases in which Convention Against Torture (CAT) claims are made, Ambassador Boyce certifies that it is NOT "more likely than not" that Prasoprat would be tortured if extradited from the US to Thailand.

¶3. (SBU) Below are answers to questions posed in Reftel, paragraph 6.

Q: Is the death penalty routinely imposed in Thailand for non-violent drug offenses? Please include statistics on: (1) the number of narcotics offenses charged per year; (2) the number of narcotics convictions; (3) the number of death sentences handed down for narcotics convictions; (4) the number of death sentences carried out for narcotics convictions; (5) the number of total death sentence convictions; (6) the number of total death sentences carried out.

A: The death penalty is mandatory for many serious drug-related offense in Thailand including certain serious non-violent drug offenses. However, mandatory death sentences are frequently reduced by judges to lesser sentences ranging from 25 years to life in prison. Additionally, death sentences are often commuted by royal pardon from the King or Queen. Statistics:

-- Number of narcotics cases in 2005: 40,849 (source: Thailand's Office of Narcotics Control Board)

-- Number of narcotics convictions in 2005: Post is unable to locate this specific statistic. However, according to Thailand's Department of Corrections, as of May 31, 2002, there were 106,256 persons incarcerated on narcotics convictions.

-- Number of death sentences handed down for narcotics convictions: Post has been unable to obtain this statistic.

-- Number of death sentences carried out for narcotics convictions: 14 between years 1998 and present. Breakdown by year: 1998 - 0; 1999 - 1; 2000 - 1; 2001 - 7; 2002 - 2; 2003 - 3; 2004 - 0; 2005 - 0; 2006 (to date) - 0. (Source: Amnesty International).

-- Number of total death sentences carried out: According to the Thai Department of Corrections, from 1997 to present, 56 executions have been carried out. Breakdown by year (1997-present): 1997 - 2; 1998 - 16; 1999 - 2; 2000 - 2; 2001 - 8; 2002 - 11; 2003 - 11; 2004 - 4; 2005 - 0; 2006 (to date) - 0. (source: Thailand Department of Corrections)

-- Number of total death sentence convictions: statistic not available.

Q: To the extent that the death penalty is imposed, is it usually carried out?

A: Actual executions are becoming more rare in Thailand. According to the Department of Corrections none have been carried out since 2004. In fact, death sentences (including those issued to defendants in narcotics cases) are very often commuted under collective royal pardons which are issued periodically on certain Thai holidays. In addition, every convicted prisoner has the right to petition the King for an individual pardon. Following are statistics from the Department of Corrections on the impact of petitions for an individual royal pardon on death penalty cases from 2001-2005.

2001: 21 Petition submitted - 12 Pardons granted (reduced sentence)
2002: 32 Petitions submitted - 32 Pardons granted (reduced sentence)
2003: 70 Petitions submitted - 63 Pardons granted (reduced sentence)
2004: 82 Petitions submitted - 76 Pardons granted (reduced sentence)
2005: 110 Petitions submitted - 98 Pardons granted (reduced sentence)

Q: How is the death penalty carried out?

A: Death sentences are carried out by lethal injection.

Q: In death penalty cases, are there adequate procedural due process protections, such as a right of the defendant to be tried in his/her presence, the right against self-incrimination (or not to confess guilt), the exclusion of evidence extracted through torture, the right to produce witnesses and to cross-examine witnesses, right to appeal, etc.?

A: Defendants in Thailand have adequate procedural due process protections, including a right to be present during the trial; a right against self-incrimination; a right against the use of threats or 'inducements' in obtaining statements from a witness/defendant; the right to produce witnesses and cross-examine witnesses, and the right to appeal the verdict. These rights are implemented in practice.

Q: Are adequate lawyers available for death penalty defendants?

A: Yes.

Q: To what extent does corruption in the judiciary prejudice criminal cases, in particular narcotics and death penalty cases?

A: Over the past several years, corruption has lessened in the judiciary overall. Post is not aware of any specific case of corruption in the judiciary that has prejudiced death penalty cases or narcotics cases.

Q: Are there other factors related to the administration of the death penalty that we should be taking into account in deciding whether to seek assurances (i.e., that the Thai

prosecutors would not seek the death penalty or would recommend clemency)?

A: In Thailand, sentencing is the discretion of the judge hearing the case. The prosecutors must bring charges for which there is specific evidence. They can recommend that a judge issue a lesser penalty, but their recommendations are not binding, and the judge can sentence a defendant to death even when the prosecutor does not pursue that sentence. Under Thai law, the ONLY authorized sentence for the production, importation or exportation of a Category I controlled substance (including heroin, amphetamines, methamphetamine, ecstasy, and LSD) is death. As such, the prosecutor cannot give a death penalty assurance. Nevertheless, Thailand has not executed anyone since 2004. The judge has the option to impose the death sentence, then immediately reduce the sentence. An admission of guilt often results in the judge reducing the sentence to life, or 25-50 years. (Note: Section 72 of the Penal Code states that a death sentence can be reduced to between 25 years and life. End note.) If the judge imposes and does not reduce a death sentence, the prisoner (or someone acting on his behalf) can petition the monarchy to have the sentence reduced.

Q: Do we know whether the Thai prosecutors are actually going to seek the death penalty in this case?

A: Post's contacts close to this case believe that the prosecutors will not actively seek the death penalty in this case. Nevertheless, under Thai law the ONLY authorized sentence for the production, importation or exportation of a Category I controlled substance (including heroin, amphetamines, methamphetamine, ecstasy, and LSD) is death.

Q: Do we know whether Prasoprat is considered a big fish by the Thai authorities?

A: Suwit's case is considered significant in Thailand because of the nature of his alleged crimes (large-scale heroin trafficking), and because Suwit's case represents the very first case in which Thailand requested that a suspect be extradited from the US. Thailand is very cooperative in accommodating US extradition requests. The Thai are among our best Mutual Legal Assistance Treaty (MLAT) and extradition treaty partners in the world. Since the US-Thailand Extradition Treaty entered into force in 1991, the US has extradited one individual to Thailand while the Thai have responded favorably to over 40 requests to extradite suspects (including Thai nationals) to the United States. DOJ and DEA view this cooperation as vital to USG efforts to combat drug trafficking in this part of the world.

Suwit's case is viewed as a barometer of whether this cooperation is mutual. Given the fact that the penalty for serious narcotics crimes in Thailand is often a mandatory death sentence, the decision to deny Suwit's extradition based on those grounds would seriously damage the utility of the US-Thai Extradition Treaty from the perspective of the Thai. Further, DOJ is concerned that a refusal to extradite Suwit may negatively impact the broader US-Thai MLAT relationship.

Q: What is the Embassy's sense of the Thai reaction to a possible request for assurances from the Thai government that Thai prosecutors will recommend to Thailand's pardoning authority that the death penalty be commuted if it is imposed in this case?

A: As stated above, under Thai law, sentencing is at the discretion of the judge hearing the case. As such, the prosecutor cannot give any such assurance. Post believes that it would be inappropriate to request such an assurance from the prosecutors when such an assurance, even if given, would be meaningless in practice. Requesting an assurance such as this would put the prosecutor's office (with whom Post has a very positive relationship) in an unnecessarily difficult position which would produce absolutely no benefit to the defendant in this case.

Q: What is the status of the legal proceedings against Boonsong a.k.a. Song Mekphongsathorn a.k.a. Thanat Yuwawanit?
Note: Boonsong's extradition was requested concurrently with Prasoprat's, and Boonsong was wanted for the same narcotics offense. Boonsong served a sentence in the United States and was subsequently deported to Thailand. End note.

A: Boonsong's case concluded in late November 2005. He was convicted and the judge issued the mandatory death sentence.

Q: What services would Embassy provide Prasoprat, as a U.S. citizen, should he be extradited?

A: The Consular Section's American Citizens Services Unit (ACS) would visit Prasoprat on a regular basis (once per month during the trial phase, and once every three months after sentencing). ACS would provide a list of private attorneys who operate in Thailand and offer to contact an attorney of Prasoprat's choosing. During regular ACS visits, a Consular Officer will inquire as to Prasoprat's well-being, listen to his concerns or requests and make the appropriate follow up with prison officials. Prasoprat will have the option of applying for an Emergency Medical and Dietary Assistance (EMDA) loan from the USG. If approved, the loan would provide Prasoprat with a small amount of money each quarter for purchase of supplemental food, toiletries, etc. from the prison canteen. The Consular officer will also provide leisure reading material for Prasoprat.

Q: Are individuals - both those awaiting trial and those serving a sentence - tortured or extra-judicially executed in Thai prisons? If so, are they more likely to be tortured or extra-judicially executed in narcotics cases?

A: While some NGOs and legal organizations report that some members of the police occasionally torture suspects to obtain confessions prior to incarceration, Post is not aware of reports of torture in prisons - both for those awaiting trial or those serving sentences. (Note: These allegations of police torture occur while suspects are in police custody, not when prisoners are incarcerated in Department of Corrections run prisons. End note.) Prisons have been known to use leg irons to control prisoners who were deemed escape risks, or sometimes prisoners on death row. However, this does not constitute torture under the Department's interpretation of the Convention Against Torture (CAT). Post is unaware of any reports of extrajudicial killings taking place inside Thai prisons.

Q: If torture or extra-judicial execution occurs in Thai prisons, do public officials commit the act? Or is the violence imposed by private actors?

A: Not applicable, see above.

Q: If public officials, are they acting in an official or unofficial capacity?

A: Not applicable, see above.

Q: If other inmates or other private actors are responsible, are Thai officials aware prior to the activities that violence will occur? Are Thai officials aware of the specific instances in advance or is it a more general awareness of the climate of violence in the prison and the failure by Thai authorities to take reasonable action to prevent the violence by private actors?

A: Not applicable, see above.

Q: If violence against alleged or convicted drug traffickers occurs, is it intentional? Is the purpose of such actions to punish the victims for drug trafficking activity or is it due to generalized violence in detention?

A: Not applicable, see above.

Q: Would a U.S. citizen - particularly one who is extradited - be treated better than other narcotics defendants?

A: Suwit would likely be treated about the same as all other prisoners in the Thai prison system. As a US citizen receiving regular visits from ACS, he might benefit slightly in terms of access to medical care, or access to EMDA loan funds to purchase supplemental food from the prison canteen.

BOYCE